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9 Counsel for Defendants,
10 Affymax, Inc., John A. Orwin, Robert F.
Venteicher, Jeffrey H. Knapp, Anne-Marie
Duliege, Herb Cross, Kathleen Laporte, Ted
W. Love, Daniel K. Spiegelman, John P.
Walker, Christine Van Heek, Keith R. Leonard,
Jr., and Hollings C. Renton
12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 CHRIS MISIALEK, Derivatively On
Behalf Of AFFYMAX, INC.

17 Plaintiff,

18 v.

19 JOHN A. ORWIN, ROBERT F. VENTEICHER,
JEFFREY H. KNAPP, ANNE-MARIE DULIEGE,
HERB CROSS, KATHLEEN LAPORTE, TED W.
LOVE, DANIEL K. SPIEGELMAN, JOHN P.
WALKER, CHRISTINE VAN HEEK, KEITH R.
LEONARD, JR., and HOLLINGS C. RENTON,
23

Defendants,

-and-

AFFYMAX, INC., a Delaware corporation,

Nominal Defendant.

Case No. 3:13-cv-03832-WHO

**JOINT REQUEST FOR ORDER
REGARDING STAY AND [PROPOSED]
ORDER**

Judge: Hon. William H. Orrick

1 Plaintiff Chris Misialek ("Plaintiff"), by and through his undersigned counsel, and
 2 defendants John A. Orwin, Robert F. Venteicher, Jeffrey H. Knapp, Anne-Marie Duliege, Herb
 3 Cross, Kathleen Laporte, Ted W. Love, Daniel K. Spiegelman, John P. Walker, Christine Van
 4 Heek, Keith R. Leonard, Jr., Hollings C. Renton, and nominal defendant Affymax, Inc.
 5 ("Affymax") (collectively, the "Defendants") (Plaintiffs and Defendants are collectively referred
 6 to herein as the "Parties"), by and through their undersigned counsel, hereby stipulate and agree
 7 as follows:

8 WHEREAS, on August 19, 2013, Plaintiff Chris Misialek filed the Shareholder Derivative
 9 Complaint for Contribution, Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust
 10 Enrichment (the "Complaint") asserting claims derivatively on behalf of nominal defendant
 11 Affymax, Inc. ("Affymax" or the "Company") against certain officers and directors of the
 12 Company (the "Federal Derivative Action");

13 WHEREAS, there is a securities fraud class action pending before the U.S. District Court
 14 for the Northern District of California ("District Court") captioned *Bartelt v. Affymax, Inc., et al.*,
 15 Case No. 3:13-cv-01025-WHO (the "Securities Class Action") asserting federal claims arising
 16 from facts common to this action;

17 WHEREAS, the damages alleged in the Complaint are, in part, related to the defense
 18 costs, potential settlement or potential adverse judgment in the Securities Class Action;

19 WHEREAS, on October 21, 2013, this Court entered an order staying this Federal
 20 Derivative Action until after a ruling on the motion to dismiss in the Securities Class Action (the
 21 "Stay Order");

22 WHEREAS, on January 21, 2014, the District Court entered an order granting in part and
 23 denying in part the motion to dismiss in the Securities Class Action (the "Order"). Pursuant to the
 24 Order, any amended complaint in the Securities Class Action shall be filed within 30 days of the
 25 Order;

26 WHEREAS, the Parties have met and conferred, consistent with the Stay Order, and have
 27 reached agreement that a stay of this Federal Derivative Action is warranted based on the facts
 28 and circumstances and considerations of judicial economy and efficiency, as set forth below:

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned counsel for the Parties, that:

1. This Federal Derivative Action is stayed in its entirety. Unless otherwise agreed by the Parties with the consent of the Court, this action shall remain stayed until resolution of the Securities Class Action;

2. Within 20 days of resolution of the Securities Action, the parties to this Federal Derivative Action shall meet and confer regarding whether the stay should remain in place or should be lifted, and shall present agreement, or their respective views, to the Court. Upon resolution of the Securities Action, no defendant shall have to respond to the Complaint until a new response date is set and/or approved by the Court;

3. If discovery proceeds in the Securities Class Action, and subject to entry of any appropriate confidentiality agreement or protective order that may be entered into by the parties in the Securities Class Action, Defendants agree to promptly provide Plaintiff with any and all discovery, formal or informal, that is produced or exchanged in the Securities Class Action. Defendants agree to provide such documents to Plaintiff, in the same form they are produced or exchanged in the Securities Class Action, within three business days of their production or exchange in the Securities Class Action;

4. Prior to a judicial determination that Plaintiff has adequately pleaded demand futility under Delaware law, the Parties agree that, absent a court order, documents and information obtained pursuant to this Stipulation shall not be used to amend Plaintiff's complaint and shall be protected pursuant to Federal Rule of Evidence 408; and

5. This Stipulation shall not preclude or prevent the Parties from stipulating to, or filing a motion seeking a court order lifting, modifying or extending the terms of this Stipulation upon a showing of good cause.

IT IS SO STIPULATED.

DATED: January 31, 2014

FINKELSTEIN THOMPSON LLP

By: /s/Rosemary M. Rivas

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25 Counsel for Plaintiff, *Chris Misialek*
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15 DATED: January 31, 2014

16 COOLEY LLP
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18 By: /s/Jeffrey M. Kaban
19 Jeffrey M. Kaban (235743)
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Love, Daniel K. Spiegelman, John P. Walker,
Christine Van Heek, Keith R. Leonard, Jr., and
Hollings C. Renton

1 **ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))**

2 In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this
3 document has been obtained from the signatory.

4 Dated: January 31, 2014

5 COOLEY LLP

6 _____
7 */s/Jeffrey M. Kaban*
Jeffrey M. Kaban (235743)

8 Attorneys for Defendants
9 *Affymax, Inc., John A. Orwin, Robert F.*
Venteicher, Jeffrey H. Knapp, Anne-Marie
Duliege, Herb Cross, Kathleen Laporte, Ted W.
Love, Daniel K. Spiegelman, John P. Walker,
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[PROPOSED] ORDER

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IT IS SO ORDERED.

DATED:

The Honorable William H. Orrick
United States District Judge